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HIGH COURT OF CHHATTISGARH AT BILASPUR

Writ Petition (S) No. 2557 of 2007

Petitioner Smt. Saraswathi Verma, W/o late Manharan Lal Verma, Aged about 45 years, R/o Gudrupara P.O. Mahasmund Dist, C.G. State.

Versus

Respondents

1. Secretary, Water Resources Department, Govt. of Chhattisgarh, DKS Bhawan, Raipur Dist, CG State.
2. Engineer-in-chief, Water Resources Department, Raipur Dist, C.G. State.
3. Divisional Jt. Director, Treasury Accounts & Pension, Raipur CG State.

Writ petition under Article 226 of the Constitution of India

Single Bench: Hon'ble Mr. Justice **Satish K. Agnihotri**

Present: Mr. K.R. Nair, Advocate for the petitioner.
Mr. Arvind Dubey, Panel Lawyer for respondents No. 1 and 2.

O R D E R

(Passed on 26th Day of April, 2007)

1. By this petition, the petitioner has prayed for a suitable writ or direction to quash the order dated 29.8.2005 passed by the respondent No. 3 directing for recovery of a sum of Rs. 1,14,234/- from the retiral dues of the petitioner's husband namely Late Shri Manhar Lal Verma on account of the fact that this amount was wrongly paid to the petitioner due to incorrect fixation of salary.

2. The brief facts, in nutshell, are that the petitioner's husband was appointed as Lower Division Clerk in the Pay-scale of Rs. 870-20-910-25-1010-30-1220-4-1420/- in the Water Resources Department, Raipur Division, Raipur vide order dated 4.1.1988 (Annexure P-1). Vide order dated 12.5.1993, increment of Rs. 20/- was granted to the petitioner's husband and relevant entry was made in the service book w.e.f. 11.1.1989

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(Annexure P-3). Thereafter, Pay-scale was revised by memo dated 12.5.1993 issued by the General Administration Department, Bhopal w.e.f. 11.1.1988 and the relevant entry was made in the service book (Annexure P-4).

3. The husband of the petitioner Late Shri Manhar Lal Verma was promoted to the post of Assistant Grade-II in the Pay-scale of Rs. 3050-4590/- w.e.f. 11.1.1996 and relevant entry was made in the service book as per Annexure P/5. Next higher Pay-scale was granted after completion of 12 years of service in the same post w.e.f. 15.1.2000.

4. Late Shri Manhar Lal Verma died in a road accident on 20.4.2005. The petitioner made an application for grant of death-cum-retirement benefit. The respondent No. 3 raised an objection to the effect that increment granted earlier was not proper. Thus, the excess payment of Rs. 1,14,234/- was ordered to be recovered from the retiral dues. The said amount was recovered from his gratuity and from his leave encashment.

5. Being aggrieved, the petitioner has filed this petition seeking a direction to the respondents to refund the said amount as deducted illegally and without affording an opportunity of hearing, and interest thereon be paid to the petitioner.

6. Shri Arvind Dubey, learned Panel Lawyer appearing for the respondents/State submits that it is admitted that no opportunity of hearing was afforded to the petitioner or her husband before the impugned order making deduction of payment to the tune of Rs. 1,14,234/- was made. It is also admitted that the revision of pay as well as payment of revised pay was not done at the instance of the petitioner's husband.

7. I have heard the learned counsel appearing for the parties, perused the pleadings and documents appended thereto. The respondents cannot

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recover the amount, if any, from the retiral dues of the petitioner, without affording an opportunity of hearing to the petitioner. The respondents have also not proved that the excess payment was made after giving any opportunity of hearing to the petitioner. To substantiate his submissions, learned counsel appearing for the petitioner cited a decision of this court in the case of ***Vidya Shankar Tiwari Vs. State of M.P. (Now State of Chhattisgarh)*** and others, reported in 2006 (2) M.P.H.T.31 (CG).

8. In the case of Vidya Shankar Tiwari (Supra), after a period of four years from the date of fixation of salary of the petitioner, he was directed to deposit the excess amount. This Court held that for the mistake of the respondent/employer, the petitioner could not be penalized without following principles of natural justice. Before asking the petitioner for making refund of extra payment, no opportunity of hearing was afforded to the petitioner. The petitioner had adjusted himself to the facts of the case and had utilized the money what was legally and duly paid to him. No opportunity of hearing was given to the petitioner before the impugned order was passed and as such the same is unreasonable, arbitrary and deserves to be quashed.

9. In view of the foregoing, this petition is allowed. The impugned order dated 29.8.2005 is quashed. The respondents are directed to refund the amount, if any, recovered pursuant to the order dated 29.8.2005 from the petitioner. The amount, if any, recovered from the petitioner shall carry the interest as applicable in savings bank account of nationalized bank from the date of recovery till its payment. No order as to costs.

Sd/-
Satish K. Agnihotri
Judge

Subhash